

# The Mirage of Parliamentary Democracy — I

by Nazim Kamran Choudhury



*The Bengali aspiration for sovereignty and self-governance that was expressed at the Grand Convention of 1950 would finally come to fruition in December, 1972 with the framing of Bangladesh's first Constitution, only to be dashed again two years later by the 4th Amendment.*

THE irony of the situation was perhaps lost that night on 6th August 1991 when the Fifth Parliament unanimously adopted the 12th Amendment to the Bangladesh Constitution and entered into a new phase of parliamentary democracy. It had been the pledge of the three alliances to create a sovereign Parliament, but each had its own reasons for doing so.

The Awami League was founded in 1949 as a reaction to the East Pakistan Muslim League Government's tampering with the results of a by-election. Its commitment to one man, one vote, and multi-party democracy was reinforced in the late sixties, and when Bangladesh became a nation it was but natural that the new constitution reflected those aspirations. The honeymoon, however, was short. Within twenty-one months or less than 800 days, on a cold January morning in 1975, the Awami League abolished multi-party parliamentary democracy. So, to see the same party once again champion the parliamentary system, to see its top leaders, most of whom were members of the 1st Parliament and had voted for the 4th amendment, espouse the cause of parliamentary government was at best, a little ironic.

The BNP had been founded in the chaos that followed 1975. Its founder, Ziaur Rahman, believed in the presidential, though multi-party, system. This philosophy was enshrined in the BNP Constitution. In 1991, the BNP went into elections believing in this system and when it formed the government in March, it still believed in it. It took a rap on the knuckles from Acting President Shahabuddin Ahmed to change its mind. The Acting President pointed out that unless the Constitution was changed, presidential elections would have to be held within the 180-day period. BNP was not sure of the outcome of the presidential election, and its leader was persuaded to agree to the change to a parliamentary system. The leader was assured that it would be a change in mere form, and that in actuality it was as usual. And so it was.

The Jatiya Party also believed in the presidential system, but then, none of its beliefs was very strong. Convenience was their byword. Since the game would be played whether it participated or not, they did not want to be left out, and so they too went along. The Jamaat-i-Islami does not believe in either the presidential or the parliamentary system. To them, all this is a mere diversion on the road to their version of a true Islamic state. But for the moment, they also wanted to belong, and they did. The minor personalities in the Parliament perhaps truly believed, and even if they did not fully comprehend the parliamentary system, they were enthusiastic about it.

The nation was euphoric. After twenty years of debate, the form of government was unanimously agreed on by all the political players, albeit for the wrong reasons. It therefore should not have been a surprise that the new parliamentary system would break down halfway into its full term. What then was this system we adopted, why did we adopt it, and what did we know about it? There was no member in

the 5th Parliament who had first-hand knowledge of the parliamentary system for the simple reason that none had ever served in a Westminster-type Parliament. The two year interlude of 1973-74 was a Parliament sans an opposition. What was this mirage of a parliamentary system that inspired a nation that had never seen it? For that we must travel back into time.

In the year 1600, Queen Elizabeth I gave the East India Company a Royal Charter to trade with India. The British form of government at that time was a monarchy. Although a English Parliament existed, through the rights wrested by the nobility from King John through the Magna Carta in 1215, it had little power and its wars with the monarchs would continue for over 500 years. By the time Sir Thomas Roe visited the court of Emperor Jahangir, the English Parliament had its first major reform in over 450 years. This was the Bill of Rights of 1689. This Bill declared that the English monarch could neither make nor suspend laws without the consent of Parliament, that he could not raise money except by parliamentary grant, that he could not maintain a standing army without parliamentary approval, and that no one could restrict the right of free speech within Parliament.

During the next 150 years in Europe, philosophers like Rousseau, Hobbs, Locke, Montesquieu would be writing about the rights of man, or the right of man to participate in his own governance. It was a war to decide who would rule whom, and that the Sikhs sided with the British, or that the hill Gurkhas fought on the English side against the Marathas of the plains, was only for the right to be a part of the ruling oligarchy. The British came out victorious, and it would be this victory that would bring to the Indian soil, albeit inadvertently, the seeds of human rights. The war of 1857 ended the rule of the East India Company and began the reign of the British Government.

Till the advent of the British, India had seen two types of invaders. There were those who came, plundered and left. Then there were those who came, conquered and stayed. Most of the latter had no real country, and so they stayed and assimilated into the Indian society, introducing some of their own culture and adopting many of the local ones. The British, on the other hand, were different. They kept their own identity, did not assimilate into local society and ultimate governance came from their home country. To India, they were the first foreign rulers, and changes in the philosophy of government in their own country would have tremendous effect in the colonies they ruled.

Historically there is an interesting parallel between the growth of British influence in India and the reform of the English Parliament. By early 19th century, the British were firmly in control of Bengal and were fast expanding their influence towards central and south India. At the same time, in Britain the Industrial Revolution was creating pressure on civil society. In 1823, the Reform Act brought the first major change to their parliamentary system. It increased the size and the composition of the electorate from 5 per cent to 7 per cent of the population. However small it was, the ball had gathered momentum. In India, the British began to lay the groundwork of an administrative system, of an education system, and of a village law system.

Things were different in India. These lands had spawned the earliest of civilisations, with structured societies and a social contract between the ruler and the ruled. The King provided stability, safety and justice. He respected an individual's rights. In return the subjects gave him their loyalty and paid him a fair tax. Ancient India also spawned some of the greatest of philosophers whose works endure even today: 'Dharma Sastra' by Manu; 'Kamasutra' by Vatsayana and possibly the most intriguing, 'Arthashastra' by Kautilya. But over thousands of years, the balance changed. The rulers became absolute and the subjects became serfs. This is what the English found in India. They did not have to wage a war with the people, for the people did not matter. Instead they fought, negotiated,

and was in the period between the two Reform Acts that philosophers such as Jeremy Bentham, James Mill, his son John Stuart Mill, and others began to influence the British middle class. Tom Paine produced his 'Rights of Man' whose revolutionary ideas would spur the new political unions composed mainly of skilled workers. It would be these years between 1832 and 1867 that would transform the British political system from an oligarchy to a democracy. These developments were not lost on India.

In 1833, in a speech on the India Bill in the House of Commons, Lord Macaulay said, 'The destinies of our Indian Empire are covered with thick darkness... It may be that the public mind of India may expand under our system till it has outgrown that system; that by good government we may educate our subjects into capacity for better government; that having become instructed in European knowledge they may, in some future age, demand European institutions. Whether such a day will ever come I know not. But never will I attempt to avert or retard it. Whenever it comes, it will be the proudest day in English history.'

Tagore was not the only one impressed with the English institutions. Dadabhai Naoroji, Mahatma Gandhi, Motilal Nehru, Mohammad Ali Jinnah, Jawaharlal Nehru, Ali Qasim Ali Khan, and a host of others would feel the English experience, meet with English writers, politicians, philosophers, associate with reform movements, and return to use this inspiration to lead their people.

By the time the Indian

National Congress was founded

in 1885, the British Parliament had introduced secret ballot in 1872,

and established effective controls on electoral expenditure and sanctions on bribery by the Corrupt Practices Act of 1883.

In 1884, the electorate was

further increased to 67 per cent, though complete manhood suffrage came only in 1918 based on one man, one vote. Women suffrage came in two stages in 1918 for women above 30 years and in 1928 for others.

The First World War was a watershed in the Indian struggle for freedom. By then, it had become crystal clear that self-rule was the only demand that the Indian political parties would accept, and there was little debate on the form of government. It was generally agreed that governance would be through elected legislatures having a cabinet form, a lot like the Westminster system.

What was unclear was the amount of autonomy the British were prepared to give. The Government of India Act, 1919, affirming limited self-rule was unacceptable, as in the words of Gandhi in 1921, 'The object is the attainment of Purna Swaraj (complete self-rule) by all legitimate and peaceful means.'

The period between the 1st and 2nd World Wars would also change civil society in Britain. With the formation of the Labour Party, increased electorate and due to the economic ravages of the First War, trade union representation in Parliament increased dramatically. This would be a period of class struggle, that of the working masses against the British aristocracy, and would lead to democratisation not only of politics, but of society itself. Simultaneously, in India, the non-cooperation movement

of 1919, the Indian Constituent Assembly adopted, enacted and gave to themselves a new Constitution.

The framers of the Constitution led by Dr B R Ambedkar, a lawyer who studied at Columbia University of New York, had a wealth of sources to draw from. The US Constitution and the Bill of Rights paved the way for fundamental rights to be incorporated in the Constitution, but in the model of the executive, and in the machinery of government, the British form was followed.

In fact, the framers adopted greatly from the Government of India Act, 1919, as in Dr. Ambedkar's words, 'As to the accusation that the Draft Constitution has produced a good part of the provisions of the G.I. Act, 35, I make no apologies. There is nothing to be ashamed of in borrowing. It involves no plagiarism. Nobody holds any patent rights on the fundamental ideas of a Constitution.'

With the new Constitution enacted, the political leaders of India set about practising the ideals that had inspired them during the long years of their struggle for freedom.

The counter proposals would now form the basis for future negotiations and would reflect the most genuine aspirations of the Bengalis. Seeing the adverse reaction to its draft report, the Constituent Assembly postponed its discussions on it, and after another two years, came out with a second draft, which was somewhat of an improvement over the first. In the meantime, with the demise of Mohammed Ali Jinnah and Ali Khan, real power at the centre was slipping into the hands of the civil bureaucracy and the power elites of the Punjab. In East Pakistan, resistance against the ruling Muslim League Government was reaching unprecedented heights, and when elections finally came in 1954, the United Front won 228 of the 237 Muslim seats. The Constituent Assembly had also lost all reason to exist, and the Governor-General, although for totally different reasons dissolved it in October 1954.

The decision of the Governor-General was challenged in the Chief Court of Sind and then in the Federal Court by Tamizuddin Khan, the President of the Constituent Assembly. The Federal Court upheld the decision of the Governor-General, but in the case of Usif Patel vs Crown, it held that the Governor-

had no law-making powers. There was now a constitutional vacuum in Pakistan. Invoking the advisory jurisdiction of the Federal Court, the Governor-General sought a way out of the impasse. In the Reference No 1 of 1955, the Federal Court, through an arduous process of interpreting the Indian Independence Act, 1947, extricated itself by advising the formation of a new Constituent Assembly.

As Moudud Ahmed observed, 'As the first constituent Assembly was dissolved unconstitutionally by the Governor-General, so was the second Constituent Assembly constituted unconstitutionally by the order of the Federal Court.'

The second Constituent Assembly was formed with 80 members, 40 from each wing.

On the 23rd March, 1956, it presented the country its first Constitution. The Constitution was derived mainly from the Government of India Act, 1935, particularly with regard to provincial autonomy. There would be a unicameral legislature to which the members of the cabinet would be individually and collectively responsible.

Along with the new Constitution came new political intrigues, particularly initiated by the Governor-General Iskander Mirza who had himself elected President. Elections were scheduled for February, 1959, but in October, 1958, Martial Law was declared and the Constitution abrogated. This would be the end of the parliamentary system of government in united Pakistan. In 1972, in his judgment in Asma Jilani vs Government of the Punjab, Chief Justice Hamooder Rahman would write, 'The 1956 Constitution.... was, it is alleged, a constitution framed by an illegally constituted body which was, under the threat of refusal of assent, also coerced into electing General Iskander Mirza as the first President of Pakistan. The process of illegality thus set in motion led in its turn to the illegal usurpation of power by the President so elected under the said Constitution.'

The first decade of governance in Pakistan was parliamentary merely in form. In nature it was governance through intrigue, bribery, coercion and intimidation in which none of the sections of the state, legislative, executive or judicial, was devoid of shadowness.

The Bengali aspiration for sovereignty and self-governance that was expressed at the Grand Convention of 1950 would finally come to fruition again two years later by the 4th Amendment. The 5th Parliament was parliamentary in form, and for the first time finished its full term. But was it parliamentary in nature, and did its tenure reflect the true parliamentary spirit? To answer that we must examine the essence and culture of the parliamentary system.

*(To be concluded tomorrow)*

The author, a former MP from BNP, is an occasional columnist and one of the directors of Centre for Analysis and Choice (CAC), a national policy research body.

*The Law and Our Rights*

page is held for today. — Ed

## The Daily Star Entertainment Guide

Sunday 2nd June

All programmes are in local time. We recommend programmes printed in bold. There may be changes in the programmes.

BTV

3:00 Opening Announcement Al Quran Programme Summary 3:10 Recitation from the Bible 3:15

Cartoon: Woody Woodpecker 3:45 Re-telcast of weekly Drama 4:00

News in Bangla 4:45 And Paramount: Science Programme for

Teenagers 5:00 News in Bangla 5:25 Sports Programme 6:00

News in Bangla 6:30 Jibone Jonny: Health Programme 7:00

News in English 7:05 Open University 7:25 Tagore Songs 8:00

News in Bangla 8:25 Jamathur 8:30 Shisha-Banga-Artha 9:00

Film Series : Akbar The Great 10:00 News in English 10:30

Shashthai : Health Programme 10:35 Sir Laiyer 11:30 News in Bangla 11:35 Monday's programme 11:40 Close down

CHANNEL V

7:00am Name Vision 9:00 The

Ride VJ Trey 10:00 Pantaloons

Fashion Police 10:30 The Best of

El Ka Team 11:00 BPL Oye!

12:00 Samu Mangta Ha 12:30

First Day First Show 1:00 Speak

Easy 1:30 Big Bang VJ Alessandra 2:00 Philips V-People 2:30

Videocon-Flash Back 3:00 Asian

Top 20 VJ Nomi 5:00 Reward VJ

Sophya 5:30 Top of The Pops

6:30am Classic Rock 7:30 Times

Time Pass 8:30 Indian Top Ten

9:00 Launch Pad VJ Sophya

10:00 The Ride 11:00 Reward VJ

Sophya 12:00 Asian Top 20 VJ

None 2:00 By Demand VJ Trey

3:00 Frame By Frame



Launch Pad on Channel V, Tonight at 9:00

BBC World News 10:29 Earth Report 10:30 Time Out: More Rhodes Around Britain 11:00 BBC World News 11:20 On The Record 12:00 BBC World News 12:20 Window On Europe 1:00 BBC World Headlines 1:05 Under The Sun 2:00 BBC World News 2:30 Time Out: Nature 3:00 BBC World Report inc. World Business Report/24 Hours 5:00 BBC World News 5:15 The Times 5:00 BBC World News in Bangla 5:15 Jibone Jonny: Health Programme 10:35 Sir Laiyer 11:30 News in Bangla 11:35 Monday's programme 11:40 Close down



Launch Pad on Channel V, Tonight at 9:00

### STAR Sports

6:00am 1986 Omega Tour 6:30 The 1996 Volvo China Tour Blue Ribbon Open 8:00 SEA Touring Cars Rd 384 Johor, Malaysia 8:30 Formula One World Championships, 1996 Spanish Grand Prix 9:30 Live 4 Nations Tournament 3:45 Play-off Game From Brisbane Aus 11:30 4 Nations Tournament Final From Brisbane Aus 1:30 1996 Wt M'Cycle Champ Italian GP 1:30 1996 Volvo China Tour 2:00 The 1996 Volvo China Tour Hugo Boss Open 3:00 Inside PGA Tour 3:30 WLF Highlights 4:00 The Asian Football Show 5:00 Asian Sport Show 5:30 Live Formula One World Championships, 1996 Spanish Grand Prix 8:00 1996 Wt M'Cycle Champ Italian GP 1:30 1996 Volvo China Tour Open Day 3 Highlights 10:00 GFL 11:30 Sunday Show Time: All About The Movies Ep 11 & 12 1996 Wt M'Cycle Champ Italian GP 1:30 1996 Volvo China Tour Hugo Boss Open 4:30 Australian Football League Highlights 5:30 Asia Sport Show 6:00 Hawwa Ki Naam 9:00 Break for Headlines News

### STAR MOVIES

7:30am Family Grand Canyon (Hindi Subtitles) 9:30 Musical At Mast Sanyo 11:00 Kharain 11:10 Sports Hour 12:05pm Duran-e-Hakeem 1:02 Bismillah 1:15 Aaj Di Kahani 1:40 Aaj Di Shaam 2:00 Kinnar Ep 33 (Drama Serial) 2:55 Ghost Writer 3:55 Karab 4:15 Education 5:25 Ruan 9:55 Zameen Per Zindge (Drama Serial) 6:25 8:00 Courses 7:00 English News 7:30 English Film: Star Trek Deep Space Nine 8:20 Hawwa Ki Naam 9:00 Break for Headlines News

### 1947-95: 10:00 Khabarnama & Commercial News 11:00 Pervaan 11:35 Home Victims (New Serial) 12:35 Music Masters-Raag Rang 1:00 Khas Khas Khabran

SONY ET

8:30am Jai Bir Hanuman 9:00 Yaadon Ki Baarat 9:30 Gaane Maane 10:00 Hindi Hits Songs 10:30 Jagdigan 11:00 12:00 Civil Lines 11:30 Sunday Ki Sunday 12:00 Hanse, Barker Koun 12:30pm Space Nine 8:20 Hawwa Ki Na